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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,949	02/20/2004	Anthony M. Ging	4398-286	9703
23117	7590	03/14/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Response to Arguments

1. **As to claims 1 and 4-6**, applicant's arguments filed on January 4, 2006 have been fully considered and are persuasive.
2. **As to claim 7**, applicant's arguments on January 4, 2006 have been fully considered and are not persuasive. The applicant argues that Replogle/Wright fails to teach a cushion for use with a nasal mask, comprising an outer membrane including a face contacting portion to form a seal with the patient and an underlying rim positioned below the membrane and a cushion that includes a nasal bridge region, a top lip region, and two side regions. The examiner disagrees. Replogle does teach a cushion for use with a nasal mask, comprising an outer membrane including a face contacting portion to form a seal with the patient and an underlying rim positioned below the membrane and a cushion that includes a nasal bridge region, a top lip region, and two side regions (**see figures 1 and 2**).
3. **As to claim 14**, applicant's arguments filed on January 4, 2006 have been fully considered and are not persuasive. The applicant argues that Replogle/Wright fails to teach a crossover member. The examiner disagrees. Replogle does teach a crossover member **12** (in a broad sense the buckles is considered a crossover member).
4. **As to claims 15 and 16**, applicant's arguments filed on January 4, 2006 have been fully considered and are not persuasive. The applicant argues that Replogle/Wright fails to teach first and second straps each adapted to be provided to the mask frame of the mask, wherein each of the first and second straps includes an at least partially coextensive yoke, each of the first and second straps along the yoke being constructed to accommodate a pre-adult in the range of 2-6

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years. Replogle teaches first and second straps, each adapted to be provided to the mask frame of the mask, wherein each of the first and second straps includes an at least partially coextensive yoke and Wright teaches a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

Allowable Subject Matter

1. Claims **1 and 4-6** are allowed.
2. Claims **8, 20 and 21** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims **7, 9-19 and 22-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Replogle (US 3,117,574) in view of Wright (US 4,657,010).

4. Referring to claims **7, 12, 13, 14 and 18**, Replogle discloses the applicant's invention as claimed with the exception of stating that the mask can accommodate at least one of a pre-adult patient or small sized patient. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claims 7 and 14 and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

5. Referring to claims **9 and 22**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that includes an aperture having a width of between about 30-42mm, an effective height as vertically measured from an edge of the rim to a top of the cushion of about 32-42mm, and an effective bridge depth about 13-24mm as vertically measured from the membrane in the nasal bridge region to the rim. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 9, and considers a matter of design choice

since the size of the yoke depends on the individual, the individual either being an adult or a child.

6. **Referring to claims 10 and 23**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that has a width of about 39-40mm, a height of about 35 mm and the depth is less than about 15mm. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 10, and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

7. **Referring to claims 11 and 24**, Replogle discloses the applicant's invention as claimed with the exception of providing a rim that has a width of about 34-35mm, a height of about 40 mm and the depth is less than about 20mm. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

After reviewing the applicant's specification the examiner found no criticality on why the yoke must be the particular dimensions as described in claim 11, and considers a matter of design choice since the size of the yoke depends on the individual, the individual either being an adult or a child.

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8. **Referring to claims 15, 26 and 27**, Replogle discloses the applicant's invention as claimed with the exception of stating that the yoke is constructed and angled to accommodate a pre-adult in the age range of 2 to 6 years. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

9. **Referring to claims 16, 17, 19 and 25**, Replogle discloses the applicant's invention as claimed with the exception of stating that the yoke is constructed and angled to accommodate a pre-adult in the age range of 6 to 16 years. Wright discloses a mask that can be adjusted to fit the facial dimensions of the wearer. Therefore it would have been obvious to modify Replogle's invention by providing a mask that can be adjusted to fit the facial dimensions of the wearer as taught by Wright in order to provide a comfortable fit.

Conclusion

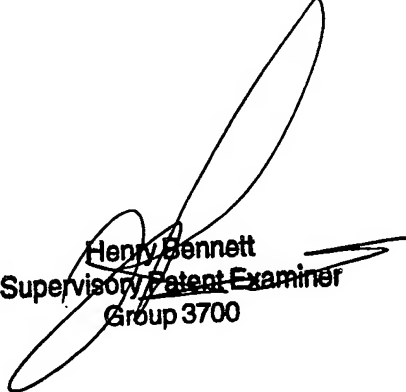
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Nihir Patel
Art Unit 3743


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